

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)
)
DONALD R. CHRONISTER and) Bankruptcy Case No. 98-
32245)
WENDY CHRONISTER,)
)
Debtors.)
_____)
)
DONALD R. CHRONISTER and)
WENDY CHRONISTER,)
)
Plaintiffs,)
)
vs.) Adversary Case No. 98-3218
)
FORD MOTOR CREDIT CORP.,)
)
Defendant.)

OPINION

This matter having come before the Court on a Motion to Turn Over Assets filed by the Plaintiffs/Debtors on August 21, 1998, and Ford Motor Credit Company's Response to Debtor's Motion to Turn Over Assets filed on September 23, 1998; the Court, having heard arguments of counsel, read written memoranda of law submitted by the parties, and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

Findings of Fact

The parties to this matter have agreed that the material facts are not in dispute and are, in pertinent part, as follows:

1. On July 17, 1998, Plaintiffs/Debtors filed for relief under Chapter 13 of the Bankruptcy Code.

2. At the time of filing of their bankruptcy petition, the Debtors were owners of a 1993 Ford Aerostar van.

3. Defendant/Creditor, Ford Motor Credit Company, had repossessed the 1993 Ford Aerostar van on May 12, 1998.

4. The repossession of the van on May 12, 1998, was precipitated by the Debtors' failure to make scheduled monthly payments. At the time of the repossession, the Debtors were four months in arrears to Ford Motor Credit Company in the approximate amount of \$1,385.08.

5. On May 13, 1998, the Debtors were advised by Ford Motor Credit Company that they could redeem the 1993 Ford Aerostar van, and that the vehicle would not be sold before the passing of 25 days after the date of repossession.

6. The Debtors did not redeem the subject vehicle within the time allotted, and the vehicle was subsequently sold for the sum of \$4,000 on July 21, 1998, some four days after the Debtors had filed for relief under Chapter 13.

7. Ford Motor Credit Company was first notified of the Debtors' bankruptcy filing under Chapter 13 via a telefacsimile on July 23, 1998. It is not disputed that Ford Motor Credit Company did not have notice of the Debtors' bankruptcy filing prior to the date of sale of the subject vehicle, on July 21, 1998.

8. The instant adversary proceeding was filed by the Debtors for the purpose of either declaring the sale of the Ford Aerostar van on July 21, 1998, as being void as a violation of the 11 U.S.C. § 362, or, in the alternative, to have Ford Motor Credit Company either furnish a

replacement vehicle or pay to the Debtors or their Trustee the fair market value of the vehicle that was sold in order that the Debtors might procure a replacement vehicle.

Conclusions of Law

At the outset, the Court would note that the Debtors are not seeking relief under 11 U.S.C. § 362(h) for a willful violation of the automatic stay. Rather, the Debtors are arguing that the violation was inadvertent and that, as such, the parties should be returned to the status quo prior to the sale of the subject vehicle. As the Debtors note in their brief, most Courts have held that actions taken in violation of the automatic stay which are inadvertent are void and without effect, or are voidable. In re Soares, 107 F.3d 969 (1st Cir. 1997); In re Schwartz, 954 F.2d 569 (9th Cir. 1992). Additionally, it has been held that, even where an action in violation of the automatic stay is inadvertent, the creditor has a duty to undo those actions taken to return the parties to their positions prior to the action. In re Johnson, 18 B.R. 755 (S.D. Ohio 1982).

As the Debtors point out in their brief, the remedy for Ford Motor Credit Company's inadvertent violation of the automatic stay is problematic. The sale in question took place nearly five months ago. As such, it is impossible for the Court to undo the sale, thus requiring an innocent purchaser to relinquish the subject vehicle back to Ford Motor Credit Company so that the Debtors might redeem the vehicle with payments through their Chapter 13 Plan. Counsel for Ford Motor Credit Company concurs that this is a problematic situation, albeit one that does not happen very often. Counsel for Ford Motor Credit

Company also concedes that there has, in fact, been an inadvertent violation of the automatic stay by virtue of the sale of the subject vehicle.

In determining a remedy, the Court first notes that, as stated above, it is neither equitable nor feasible to require Ford Motor Credit Company to undo the sale of the subject vehicle, thus punishing an innocent purchaser. The Court also notes that the suggested alternative of having Ford Motor Credit Company find a replacement vehicle upon which Ford Motor Credit Company would have a lien to be repaid over the life of the Debtors' Chapter 13 Plan is neither practical nor feasible. The parties themselves recognize that it would be very difficult to find a similar vehicle, and then the situation would be further complicated if any problems arose with the replacement vehicle at a later date. Thus, the Court must find another alternative solution.

In a normal Chapter 13 proceeding where debtors wish to retain a vehicle whose value is less than the secured claim of the lienholder, the debtors are allowed to cram down the secured claim to the value of the vehicle and to pay that secured claim over the life of the plan together with interest, with any deficiency balance being allowed as an unsecured claim to be paid along with other unsecureds through the plan. 11 U.S.C. §§ 1325(a)(5)(B)(i) and (ii). The value of the vehicle, as stated by the Supreme Court in Associates Commercial Corp. v. Rash, 117 S.Ct. 1879 (1997), is the price a willing buyer in the Debtors' situation would pay to obtain like property from a willing seller. Unlike a normal Chapter 13 situation, in this case the vehicle in question has been sold for the sum of \$4,000, and, absent other available evidence,

the Court must conclude that that \$4,000 is the value of the collateral and would be the figure upon which a secured claim would be based.

In the instant case, both parties have suggested an alternative remedy whereby Ford Motor Credit Company would relinquish the \$4,000 in proceeds from the sale of the subject vehicle to the Debtors; the Debtors would then be allowed to purchase a replacement vehicle upon which Ford Motor Credit Company would have a lien in the amount of \$4,000, to be paid over the life of the Debtors' Chapter 13 Plan at 9% interest; and the balance of Ford Motor Company's claim would be treated as unsecured, and be paid together with the other unsecured creditors under the Debtors' Chapter 13 Plan. In considering all of the possible alternatives, the Court finds that this alternative is the most practical, reasonable, and equitable remedy available under the undisputed facts in this case.

Based upon the foregoing discussion, the Court finds it appropriate to order Ford Motor Credit Company to pay over the sum of \$4,000 to the Debtors with said sum to be used to purchase a replacement vehicle by the Debtors. Ford Motor Credit Company would then be allowed to place a lien on the title to the vehicle in the amount of \$4,000, with said sum to be paid through the Debtors' Chapter 13 Plan, with interest at the rate of 9% per annum. The balance of Ford Motor Credit Company's claim would be treated as unsecured to be paid through the Debtors' Chapter 13 Plan as provided.

ENTERED: December 28, 1998.

/s/ GERALD D. FINES
United States Bankruptcy Judge